# In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 212

WILLIAM R. THORSEN, PETITIONER

*v.*

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

*ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE RESPONDENT

### OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 84–93) is reported in 65 F. (2d) 234. The opinion of the Board of Tax Appeals (R. 54–65) is reported in 24 B.T.A. 480.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 19, 1933. (R. 93–94.) The petition for a writ of certiorari was filed June 29, 1933, and was granted October 9, 1933. (R. 99.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

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## QUESTION PRESENTED

Whether, in determining what part of a distribution declared and paid by a corporation to its stockholders in 1923 represented earnings or profits accumulated prior to March 1, 1913, and was therefore exempt from tax, losses sustained by the corporation in 1915 and 1916 are to be regarded as diminishing the surplus existing on March 1, 1913, or as reducing the profits accumulated between 1916 and 1923.

## STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set forth in the appendix to the brief for the petitioner in *Guy T. Helvering, Commissioner of Internal Revenue,* v. *Charles J. Canfield,* No. 158, October Term, 1933.

## STATEMENT

The facts in this case are in all material respects identical with those involved in the case of *Guy T. Helvering, Commissioner of Internal Revenue,* v. *Charles J. Canfield,* No. 158, October Term, 1933, and reference is made to the statement in the brief for the petitioner in that case. The petitioner in the instant case owned 3,270 shares of the capital stock of the West Side Lumber Company. (R. 51.) On April 14, 1923, the company declared a dividend of $5,100,000, of which the petitioner received $1,111,800. (R. 53.) The Commissioner of Internal Revenue contended before the Board of Tax Appeals that of this dividend 22.75% was taxable

as being paid out of earnings accumulated since February 28, 1913, while the petitioner claimed that only 14.91% was so taxable. (R. 54.) As in the *Canfield* case, *supra,* the difference depends upon the proper application of the losses sustained by the corporation in the fiscal years 1915 and 1916. The Board of Tax Appeals (seven members dissenting) sustained the ruling of the Commissioner. (R. 54–65.) The Circuit Court of Appeals affirmed the decision of the Board. (R. 84–94.)

## ARGUMENT

The question in this case is the same as that in the *Canfield* case, *supra,* and the two cases have been assigned for argument together. In the interest of brevity the respondent adopts and incorporates herein by reference the argument presented in the brief filed in his behalf in the *Canfield* case. For the reasons there stated it is submitted that the decision of the Circuit Court of Appeals for the Ninth Circuit is correct and should be affirmed.

Respectfully submitted.

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